

Petition for Rule Making
Of Global Frontiers, Inc.

EXHIBIT NO. 3

Part 26 of Title 47 CFR, Showing
Revisions Proposed by Petitioner

CODE OF FEDERAL REGULATIONS

TITLE 47 -- TELECOMMUNICATION

PART 26 -- GENERAL WIRELESS COMMUNICATIONS SERVICE

(As adopted in the Second Report and Order in ET Docket No. 94-32, FCC-95-319, released 08/02/95, and amended in the Fourth Report and Order, FCC 98-212, released 09/24/98, and Memorandum Opinion and Order, FCC 98-212, released 11/25/98. Revised to include Petitioner's proposed rules changes. Added language appears as **shaded text**. Deleted language appears [~~in brackets with strikeouts~~].

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Subpart A -- General Information

§ 26.1 Basis and purpose.

This section contains the statutory basis for this part of the rules and provides the purpose for which this part is issued.

(a) *Basis*. The rules for the general wireless communications service (GWCS) in this part are promulgated under the provisions of the Communications Act of 1934, as amended, that vests authority in the Federal Communications Commission to regulate radio transmission and to issue licenses for radio stations.

(b) *Purpose*. This part states the conditions under which portions of the radio spectrum are made available and licensed for GWCS.

(c) *Scope*. The rules in this part apply only to stations authorized under this part.

§ 26.2 Other applicable rule parts.

Other FCC rule parts applicable to licensees in the general wireless communications service include the following:

(a) *Part 0*. This part describes the Commission's organization and delegations of authority. Part 0 of this chapter also lists available Commission publications, standards and procedures for access to Commission records, and location of Commission Field Offices.

(b) *Part 1*. This part includes rules of practice and procedure for license applications, adjudicatory proceedings, procedures for reconsideration and review of the Commission's actions; provisions concerning violation notices and forfeiture proceedings; and the environmental requirements that, if applicable, must be complied with prior to the initiation of construction.

(c) *Part 2*. This part contains the Table of Frequency Allocations and special requirements in international regulations, recommendations, agreements, and treaties. This part also contains standards and procedures concerning the marketing and importation of radio frequency devices, and for obtaining equipment authorization.

(d) *Part 5*. This part contains rules prescribing the manner in which parts of the radio frequency spectrum may be made available for experimentation.

(e) *Part 17*. This part contains requirements for construction, marking and lighting of antenna towers.

(f) *Part 68*. This part contains technical standards for connection of terminal equipment to the telephone network.

§ 26.3 Permissible communications.

GWCS licensees may provide any fixed or mobile communications service on their assigned spectrum. Broadcasting services, Radiolocation services and satellite services, as defined in §2.1 of this Chapter, are prohibited.

§ 26.4 Terms and definitions.

Affiliate. See Section 1.2110(b)(4).

Assigned Frequency. The center of the frequency band assigned to a station.

Authorized Bandwidth. The maximum width of the band of frequencies permitted to be used by a station. This is normally considered to be the necessary or occupied bandwidth, whichever is greater.

Average Terrain. The average elevation of terrain between 3 and 16 kilometers from the antenna site.

Controlling interest.

(i) For purposes of this section, controlling interest includes individuals or entities with both de jure and de facto control of the applicant. De jure control is greater than 50 percent of the voting stock of a corporation, or in the case of a partnership, the general partner. De facto control is determined on a case-by-case basis. An entity must disclose its equity interest and demonstrate at least the following indicia of control to establish that it retains de facto control of the applicant:

(A) the entity constitutes or appoints more than 50 percent of the board of directors or management committee;

(B) the entity has authority to appoint, promote, demote, and fire senior executives that control the day-to-day activities of the licensee; and

(C) the entity plays an integral role in management decisions.

(ii) Calculation of Certain Interests.

(A) Ownership interests shall be calculated on a fully diluted basis; all agreements such as warrants, stock options and convertible debentures will generally be treated as if the rights thereunder already have been fully exercised.

(B) Partnership and other ownership interests and any stock interest equity, or outstanding stock, or outstanding voting stock shall be attributed as specified below.

(C) Stock interests held in trust shall be attributed to any person who holds or shares the power to vote such stock, to any person who has the sole power to sell such stock, and, to any person who has the right to revoke the trust at will or to replace the trustee at will. If the trustee has a familial, personal, or extra-trust business relationship to the grantor or the beneficiary, the grantor or beneficiary, as appropriate, will be attributed with the stock interests held in trust.

(D) Non-voting stock shall be attributed as an interest in the issuing entity.

(E) Limited partnership interests shall be attributed to limited partners and shall be calculated according to both the percentage of equity paid in and the percentage of distribution of profits and losses.

(F) Officers and directors of an entity shall be considered to have an attributable interest in the entity. The officers and directors of an entity that controls a licensee or applicant shall be considered to have an attributable interest in the licensee or applicant.

(G) Ownership interests that are held indirectly by any party through one or more intervening corporations will be determined by successive multiplication of the ownership percentages for each link in the vertical ownership chain and application of the relevant attribution benchmark to the resulting product, except that if the ownership percentage for an interest in any link in the chain exceeds 50 percent or represents actual control, it shall be treated as if it were a 100 percent interest.

(H) Any person who manages the operations of an applicant or licensee pursuant to a management agreement shall be considered to have an attributable interest in such applicant or licensee if such

person or its affiliate pursuant to Section 1.2110(b)(4), has authority to make decisions or otherwise engages in practices or activities that determine, or significantly influence

- (i) The nature or types of services offered by such an applicant or licensee;
- (ii) The terms upon which such services are offered; or
- (iii) The prices charged for such services.

(I) Any licensee or its affiliate who enters into a joint marketing arrangement with an applicant or licensee, or its affiliate, shall be considered to have an attributable interest, if such applicant or licensee, or its affiliate, has authority to make decisions or otherwise engage in practices or activities that determine, or significantly influence,

- (i) The nature or types of services offered by such an applicant or licensee;
- (ii) The terms upon which such services are offered; or
- (iii) The prices charged for such services.

Effective Radiated Power (e.r.p.) (in a given direction). The product of the power supplied to the antenna and its gain relative to a half-wave dipole in a given direction.

Equivalent Isotropically Radiated Power (e.i.r.p.). The product of the power supplied to the antenna and the antenna gain in a given direction relative to an isotropic antenna.

Fixed Service. A radio communication service between specified fixed points.

Fixed Station. A station in the fixed service.

Frequency Block. One of the five, 10 megahertz wide channels listed in Section 26.103.

Gross Revenues. See Section 1.2110(m).

Land Mobile Service. A mobile service between base stations and land mobile stations, or between land mobile stations.

Land Mobile Station. A mobile station in the land mobile service capable of surface movement within the geographic limits of a country or continent.

Land Station. A station in the mobile service not intended to be used while in motion.

Mobile Service. A radio communication service between mobile and land stations, or between mobile stations.

Mobile Station. A station in the mobile service intended to be used while in motion or during halts at unspecified points.

National Geodetic Reference System (NGRS): The name given to all geodetic control data contained in the National Geodetic Survey (NGS) data base. (Source: National Geodetic Survey, U.S. Department of Commerce)

Rural Telephone Company. A *rural telephone company* is any local exchange carrier operating entity to the extent that such entity --

(i) provides common carrier service to any local exchange carrier study area that does not include either

(A) any incorporated place of 10,000 inhabitants or more, or any part thereof, based on the most recently available population statistics of the Bureau of the Census, or

(B) any territory, incorporated or unincorporated, included in an urbanized area, as defined by the Bureau of the Census as of August 10, 1993;

(ii) provides telephone exchange service, including exchange access, to fewer than 50,000 access lines;

(iii) provides telephone exchange service to any local exchange carrier study area with fewer than 100,000 access lines; or

(iv) has less than 15 percent of its access lines in communities of more than 50,000 on the date of enactment of the Telecommunications Act of 1996.

Small Business: Consortium of Small Businesses.

(1) A small business is an entity that, together with its affiliates and entities holding controlling interests in the entity, has average annual gross revenues that are not more than \$40 million for the preceding three years

(2) A small business consortium is a conglomerate organization formed as a joint venture between or among mutually independent business firms, each of which individually satisfies the definition of a small business. Where an applicant (or licensee) is a consortium of small businesses, the gross revenues of each business shall not be aggregated.

(3) Applicants without identifiable controlling interests. Where an applicant (or licensee) cannot identify controlling interests under the standards set forth in this section, the gross revenues of all interest holders in the applicant, and their affiliates, will be attributable.

Total assets. *Total assets* shall mean the book value (except where generally accepted accounting principles (GAAP) require market valuation) of all property owned by an entity, whether real or personal, tangible or intangible, as evidenced by the most recent audited financial statements.

Subpart B -- Applications and Licenses

§ 26.11 Initial authorization.

(a) An applicant must file an application for an initial authorization in each market and frequency block desired.

(b) Blanket licenses are granted for each market and frequency block. Applications for individual sites are not required and will not be accepted.

§ 26.12 Eligibility.

Any entity, other than those precluded by section 310 of the Communications Act of 1934, as amended, 47 U.S.C. § 310, is eligible to hold a license under this part.

§ 26.13 License period.

Licenses for service areas will be granted for ten year terms from the date of original issuance or renewal.

§ 26.14 Criteria for comparative renewal proceedings.

A renewal applicant involved in a comparative renewal proceeding shall receive a preference, commonly referred to as a renewal expectancy, which is the most important comparative factor to be considered in the proceeding, if its past record for the relevant license period demonstrates that the renewal applicant:

- (a) Has provided "substantial" service during its past license term. "Substantial" service is defined as service which is sound, favorable, and substantially above a level of mediocre service which might just minimally warrant renewal; and
- (b) Has substantially complied with applicable Commission rules, policies and the Communications Act.

Subpart C -- Technical Standards

§ 26.51 Equipment authorization.

- (a) Each transmitter utilized for operation under this part and each transmitter marketed, as set forth in § 2.803 of this chapter, must be of a type that has been authorized by the Commission under its type acceptance procedure.
- (b) Any manufacturer of radio transmitting equipment to be used in these services may request equipment authorization following the procedures set forth in Subpart J of part 2 of this chapter. Equipment authorization for an individual transmitter may be requested by an applicant for a station authorization by following the procedures set forth in part 2 of this chapter.

§ 26.52 RF safety.

Licensees and manufacturers are subject to the radiofrequency radiation exposure requirements specified in §1.1307b), §2.1091 and §2.1093 of this chapter, as appropriate. Applications for equipment authorization of mobile or portable devices operating under this section must contain a statement confirming compliance with these requirements for both fundamental emissions and unwanted emissions. Technical information showing the basis for this statement must be submitted to the Commission upon request.

§ 26.53 Emission limits.

- (a) The power of any emission at the edges of the ~~[4660-4685]~~ 4940-4990 MHz band shall be attenuated below the transmitter power (P) by at least $43 + 10 \log_{10}(P)$ or 80 decibels, whichever is less.
- (b) Compliance with these provisions is based on the use of measurement instrumentation employing a resolution bandwidth of 1 MHz or greater. However, in the 1 MHz bands immediately outside and adjacent to the frequency block a resolution bandwidth of at least one percent of the emission bandwidth of the fundamental emission of the transmitter may be employed. The emission bandwidth is defined as the width of the signal between two points, one below the carrier center frequency and one above the carrier center frequency, outside of which all emission are attenuated at least 26 dB below the transmitter power.
- (c) When measuring the emission limits, the nominal carrier frequency shall be adjusted as close the license's frequency block edges, both upper and lower, as the design permits.
- (d) The measurements of emission power can be expressed in peak or average values, provided that they are expressed in the same parameters as the transmission power.

(e) When an emission outside of the authorized bandwidth causes harmful interference, the Commission may, at its discretion, require greater attenuation than specified in this section.

§ 26.54 Frequency stability.

The frequency stability shall be sufficient to ensure that the fundamental emission stays within the authorized frequency block.

§ 26.55 Field strength limits.

The predicted or measured median field strength at any location on the border of the GWCS service area shall not exceed 55 dBu unless licensees operating in adjacent areas agree to a higher field strengths along their mutual borders.

§ 26.56 Antenna structures; air navigation safety.

Licensees that own their antenna structures must not allow these antenna structures to become a hazard to air navigation. In general, antenna structure owners are responsible for registering antenna structures with the FCC if required by Part 17 of this chapter, and for installing and maintaining any required marking and lighting. However, in the event of default of this responsibility by an antenna structure owner, each FCC permittee or licensee authorized to use an affected antenna structure will be held responsible by the FCC for ensuring that the antenna structure continues to meet the requirements of Part 17 of this chapter. See § 17.6 of this chapter.

(a) *Marking and lighting.* Antenna structures must be marked, lighted and maintained in accordance with Part 17 of this chapter and all applicable rules and requirements of the Federal Aviation Administration.

(b) *Maintenance contracts.* Antenna structure owners (or licensees and permittees, in the event of default by an antenna structure owner) may enter into contracts with other entities to monitor and carry out necessary maintenance of antenna structures. Antenna structure owners (or licensees and permittees, in the event of default by an antenna structure owner) that make such contractual arrangements continue to be responsible for the maintenance of antenna structures in regard to air navigation safety.

Subpart D -- Miscellaneous

§ 26.101 Multiple ownership restrictions.

(a) GWCS licensees shall not have an ownership interest in more than ~~three~~ **four** of the five, ~~5~~ **10** megahertz wide channels available in any geographic area. For purposes of this restriction, a GWCS licensee is:

(1) Any institutional investor, as defined in §26.4, with an ownership interest of ten or more percent in a GWCS license; and

(2) Any other person or entity with an ownership interest of five or more percent in a GWCS license.

(b) In cases where a party had indirect ownership, through an interest in an intervening entity (or entities) that has ownership in the GWCS license, that indirect ownership shall be attributable if the percentages of ownership at each level, multiplied together, equal five or more percent ownership of the GWCS license, except that if the ownership percentage for an interest in any link in the chain exceeds 50 percent or represents actual control, it shall be treated as if it were a 100 percent interest.

Example: Party X has a non-controlling ownership interest of 25 percent in Company Y, which in turn has a non-controlling ownership interest of 10 percent in Company Z, the GWCS licensee. Party X's effective ownership interest in Company Z is Party X's ownership interest in Company Y (25 percent) times Company Y's ownership interest in Company Z (10 percent). Therefore, Party X's effective ownership interest in Company Z is 2.5 percent, and is not attributable.

(c) Notwithstanding paragraph (b) of this section, the following interests shall not constitute attributable ownership interests for purposes of paragraph (a) of this section:

(1) A limited partnership interest held by an institutional investor (as defined § 26.4) where the limited partner is not materially involved, directly or indirectly, in the management or operation of the GWCS holdings of the partnership, and the licensee so certifies. The criteria which would assure adequate insulation for the purposes of this certification require: (i) Prohibiting limited partners from acting as employees of the limited partnership if responsibilities relate to the carrier activities of the licensee;

(ii) Barring the limited partners from serving as independent contractors;

(iii) Restricting communication among limited partners and the general partner regarding day-to-day activities of the licensee;

(iv) Empowering the general partner to veto admissions of new general partners;

(v) Restricting the circumstances in which the limited partners can remove the general partner;

(vi) Prohibiting the limited partners from providing services to the partnership relating to the GWCS holdings of the licensee; and

(vii) Stating that the limited partners may not become involved in the management or operation of the licensee.

§ 26.102 Service areas.

GWCS service areas are based on Economic Areas developed by the Bureau of Economic Analysis, Department of Commerce, referred to as "EAs" and three additional EA-like service areas: Guam and the Northern Mariana Islands (combined as one service area), Puerto Rico and the United States Virgin Islands (combined as one service area), and American Samoa.

(a) *Economic Areas.* Codes from 001 to 172 are assigned to the EAs in approximate geographic order, beginning with 001 in northern Maine, continuing south to Florida, then north to the Great Lakes, and continuing in a serpentine pattern to the West Coast. Except for the Western Oklahoma EA (126), the Northern Michigan EA (058), and the 17 EAs that mainly correspond to consolidated metropolitan statistical areas (CMSAs), each EA is named for the metropolitan area or city that is the node of its largest component economic area (CEA) and that is usually, but not always, the largest metropolitan area or city in the EA. Each CEA consists of a single economic node and the surrounding counties that are economically related to the node. The following list provides EA codes and names.

Code and Name

001 Bangor, ME
002 Portland, ME
003 Boston-Worcester-Lawrence-Lowell-Brockton, MA-NH
004 Burlington, VT
005 Albany-Schenectady-Troy, NY
006 Syracuse, NY
007 Rochester, NY
008 Buffalo-Niagara Falls, NY
009 State College, PA
010 New York-No. New Jersey-Long Island, NY-NJ-CT-PA
011 Harrisburg-Lebanon-Carlisle, PA
012 Philadelphia-Wilmington-Atlantic City, PA-NJ-DE-MD
013 Washington-Baltimore, DC-MD-VA-WV
014 Salisbury, MD
015 Richmond-Petersburg, VA
016 Staunton, VA
017 Roanoke, VA
018 Greensboro-Winston-Salem-High Point, NC
019 Raleigh-Durham-Chapel Hill, NC
020 Norfolk-Virginia Beach-Newport News, VA-NC
021 Greenville, NC
022 Fayetteville, NC
023 Charlotte-Gastonia-Rock Hill, NC-SC
024 Columbia, SC
025 Wilmington, NC
026 Charleston-North Charleston, SC
027 Augusta-Aiken, GA-SC
028 Savannah, GA
029 Jacksonville, FL
030 Orlando, FL
031 Miami-Fort Lauderdale, FL
032 Fort Myers-Cape Coral, FL
033 Sarasota-Bradenton, FL
034 Tampa-St. Petersburg-Clearwater, FL
035 Tallahassee, FL
036 Dothan, AL
037 Albany, GA
038 Macon, GA
039 Columbus, GA-AL
040 Atlanta, GA
041 Greenville-Spartanburg-Anderson, SC
042 Asheville, NC

043 Chattanooga, TN-GA
044 Knoxville, TN
045 Johnson City-Kingsport-Bristol, TN-VA
046 Hickory-Morganton, NC
047 Lexington, KY
048 Charleston, WV
049 Cincinnati-Hamilton, OH-KY-IN
050 Dayton-Springfield, OH
051 Columbus, OH
052 Wheeling, WV-OH
053 Pittsburgh, PA
054 Erie, PA
055 Cleveland-Akron, OH
056 Toledo, OH
057 Detroit-Ann Arbor-Flint, MI
058 Northern Michigan, MI
059 Green Bay, WI
060 Appleton-Oshkosh-Neenah, WI
061 Traverse City, MI
062 Grand Rapids-Muskegon-Holland, MI
063 Milwaukee-Racine, WI
064 Chicago-Gary-Kenosha, IL-IN-WI
065 Elkhart-Goshen, IN
066 Fort Wayne, IN
067 Indianapolis, IN
068 Champaign-Urbana, IL
069 Evansville-Henderson, IN-KY
070 Louisville, KY-IN
071 Nashville, TN
072 Paducah, KY
073 Memphis, TN-AR-MS
074 Huntsville, AL
075 Tupelo, MS
076 Greenville, MS
077 Jackson, MS
078 Birmingham, AL
079 Montgomery, AL
080 Mobile, AL
081 Pensacola, FL
082 Biloxi-Gulfport-Pascagoula, MS
083 New Orleans, LA
084 Baton Rouge, LA
085 Lafayette, LA
086 Lake Charles, LA

087 Beaumont-Port Arthur, TX
088 Shreveport-Bossier City, LA
089 Monroe, LA
090 Little Rock-North Little Rock, AR
091 Fort Smith, AR-OK
092 Fayetteville-Springdale-Rogers, AR
093 Joplin, MO
094 Springfield, MO
095 Jonesboro, AR
096 St. Louis, MO-IL
097 Springfield, IL
098 Columbia, MO
099 Kansas City, MO-KS
100 Des Moines, IA
101 Peoria-Pekin, IL
102 Davenport-Moline-Rock Island, IA-IL
103 Cedar Rapids, IA
104 Madison, WI
105 La Crosse, WI-MN
106 Rochester, MN
107 Minneapolis-St. Paul, MN-WI
108 Wausau, WI
109 Duluth-Superior, MN-WI
110 Grand Forks, ND-MN
111 Minot, ND
112 Bismarck, ND
113 Fargo-Moorhead, ND-MN
114 Aberdeen, SD
115 Rapid City, SD
116 Sioux Falls, SD
117 Sioux City, IA-NE
118 Omaha, NE-IA
119 Lincoln, NE
120 Grand Island, NE
121 North Platte, NE
122 Wichita, KS
123 Topeka, KS
124 Tulsa, OK
125 Oklahoma City, OK
126 Western Oklahoma, OK
127 Dallas-Fort Worth, TX
128 Abilene, TX
129 San Angelo, TX
130 Austin-San Marcos, TX

- 131 Houston-Galveston-Brazoria, TX
- 132 Corpus Christi, TX
- 133 McAllen-Edinburg-Mission, TX
- 134 San Antonio, TX
- 135 Odessa-Midland, TX
- 136 Hobbs, NM
- 137 Lubbock, TX
- 138 Amarillo, TX
- 139 Santa Fe, NM
- 140 Pueblo, CO
- 141 Denver-Boulder-Greeley, CO
- 142 Scottsbluff, NE
- 143 Casper, WY
- 144 Billings, MT
- 145 Great Falls, MT
- 146 Missoula, MT
- 147 Spokane, WA
- 148 Idaho Falls, ID
- 149 Twin Falls, ID
- 150 Boise City, ID
- 151 Reno, NV
- 152 Salt Lake City-Ogden, UT
- 153 Las Vegas, NV-AZ
- 154 Flagstaff, AZ
- 155 Farmington, NM
- 156 Albuquerque, NM
- 157 El Paso, TX
- 158 Phoenix-Mesa, AZ
- 159 Tucson, AZ
- 160 Los Angeles-Riverside-Orange County, CA
- 161 San Diego, CA
- 162 Fresno, CA
- 163 San Francisco-Oakland-San Jose, CA
- 164 Sacramento-Yolo, CA
- 165 Redding, CA
- 166 Eugene-Springfield, OR
- 167 Portland-Salem, OR-WA
- 168 Pendleton, OR
- 169 Richland-Kennewick-Pasco, WA
- 170 Seattle-Tacoma-Bremerton, WA
- 171 Anchorage, AK
- 172 Honolulu, HI

(b) Other eligible areas not included in the Bureau of Economic Analysis's list of EAs include: Guam and the Northern Mariana Islands, Puerto Rico and United States Virgin Islands, and American Samoa.

§ 26.103 Frequencies

The following frequencies are available for GWCS in the Economic Areas and other areas described in § 26.102 as shown below.

Channel Block	Frequency Band
Block A:	{4660-4665} 4940-4950 MHz
Block B:	{4665-4670} 4950-4960 MHz
Block C:	{4670-4675} 4960-4970 MHz
Block D:	{4675-4680} 4970-4980 MHz
Block E:	{4680-4685} 4980-4990 MHz

§ 26.104 Construction requirements.

(a) GWCS licensees shall within five years of initial license grant date offer service to one-third of the population in the area in which they are licensed. Licensees shall serve two-thirds of the population in the area in which they are licensed within ten years of initial license grant date.

(b) In demonstrating compliance with the above construction requirements, licensees must base their calculations on signal field strengths that ensure reliable service for the technology utilized. Licensees may use any service radius contour formula developed or generally used by industry, provided that such formula is based on the technical characteristics of their system.

(c) Upon meeting the five and ten year benchmarks in paragraph (a) of this section, licensees shall file a map and other supporting documentation that demonstrates compliance with the geographic area or population coverage requirement. Licensees shall file a statement indicating commencement of service. The filing must be received at the Commission on or before expiration of the relevant period.

(d) If the sale of a license is approved, the new licensee is held to the original build-out requirement.

(e) Failure by a licensee to meet the above construction requirements may result in forfeiture of the license and ineligibility to regain it.

Note: Population-based construction requirements contained in this section shall be based on the 1990 census.

§ 26.105 Notification to the Arecibo Observatory.

(a) The requirements in this section are intended to minimize possible interference at the Arecibo Observatory in Puerto Rico. Licensees must make reasonable efforts to protect the Observatory from interference. Licensees planning to construct and operate a new station at a permanent fixed location on the islands of Puerto Rico, Desecheo, Mona, Vieques or Culebra in services in which individual station licenses are issued by the FCC; planning to construct and operate a new station at a permanent

fixed location on these islands that may cause interference to the operations of the Arecibo Observatory in services in which individual station licenses are not issued by the FCC; or planning a modification of any existing station at a permanent fixed location on these islands that would increase the likelihood of causing interference to the operations of the Arecibo Observatory must notify the Interference Office, Arecibo Observatory, Post Office Box 995, Arecibo, Puerto Rico 00613, in writing or electronically (e-mail address: prcz@naic.edu), of the technical parameters of the planned operation. Carriers may wish to use the interference guidelines provided by Cornell University as guidance in designing facilities to avoid interference to the Observatory. The notification must include identification of the geographical coordinates of the antenna location (NAD-83 datum), the antenna height, antenna directivity (if any), proposed channel and FCC rule part, type of emission, and effective isotropic radiated power.

(b) In services in which individual station licenses are issued by the FCC, the notification required in paragraph (a) of this section should be sent at the same time the application is filed with the FCC, and at least 20 days in advance of the applicant's planned operation. The application must state the date that notification in accordance with paragraph (a) was made. In services in which individual station licenses are not issued by the FCC, the notification required in paragraph (a) of this section should be sent at least 45 days in advance of the applicant's planned operation. In the latter services, the Interference Office must inform the FCC of a notification by an applicant within 20 days if the Office plans to file comments or objections to the notification. After the FCC receives an application from a service applicant or is informed by the Interference Office of a notification from a service applicant, the FCC will allow the Interference Office a period of 20 days for comments or objections in response to the application or notification.

(c) If an objection to any planned service operation is received during the 20 day period from the Interference Office, the FCC will take whatever action is deemed appropriate.

Subpart E - Competitive Bidding Procedures for GWCS

§ 26.201 GWCS subject to competitive bidding.

(a) Mutually exclusive initial applications to provide GWCS service are subject to competitive bidding procedures. The general competitive bidding procedures found in 47 CFR Part 1, Subpart Q, will apply unless otherwise provided in this part.

(b) Notwithstanding anything to the contrary in the general competitive bidding procedures in Part 1, such procedures will not be employed if:

(1) There is a single bidder for a frequency block or blocks in an Economic Area, so that mutual exclusivity does not exist. In that case the Commission shall, promptly after the closing date for filing applications to participate in the FCC auction, notify the single bidder and ask that it promptly submit the long form application required by §26.305(b). Thereupon, if the Commission can make the favorable determinations required by §§26.302(a) and 26.322(a), then subject to §1.2108 it shall forthwith grant an instrument of authorization to that bidder.

(2) The Commission can determine that all applications by eligible applicants for a frequency block or blocks in an Economic Area may be granted without conflicts such as are described in §26.321 that render applications mutually exclusive. Consultations, collaboration, discussions, and exchange of information among applicants after the closing date for the filing of their applications regarding their

intended uses of the frequencies, for the purpose of ascertaining whether mutual exclusivity can be avoided by engineering solutions, and which do not seek dismissal or withdrawal of any application for payment or other consideration, shall not be deemed to contravene the prohibition of "collusion" among applicants in §1.2105(c). Engineering solutions may include partitioning of geographic portions of an Economic Area based on any boundaries agreed to by all applicants for the same frequency block or blocks in the Economic Area. Upon request to the Commission by all applicants for a frequency block or blocks in an Economic Area, an auction as to such frequencies shall be postponed for ninety days to permit such consultation, or until earlier notified by the applicants that no engineering solution to mutual exclusivity is possible, at which time the Commission shall promptly reinstitute competitive bidding procedures and schedule an auction. Upon a determination by all such applicants that they can file long form applications that are not mutually exclusive, they shall each submit the long form application required by §26.305(b). Thereupon, if the Commission can determine from the applications that they are not mutually exclusive, and that the applicants or any of them is otherwise eligible to receive an authorization under §26.302, and can make the additional favorable determinations as to all such eligible applicants that are required by §§26.302(a) and 26.322(a), then subject to §1.2108 the Commission shall forthwith grant an instrument of authorization to each eligible applicant. If the Commission cannot make the required determinations as to all eligible applicants, it shall reinstitute competitive bidding procedures and schedule an auction. No auction shall be held for a frequency block or blocks in an Economic Area as to which long form applications by all potential bidders asserting an absence of mutual exclusivity are pending, until such time as the Commission has made a determination that none of the applications is grantable without holding an auction, but if not all of the applications are grantable without competitive bidding, the Commission shall proceed to hold an auction for those applicants that it has determined are mutually exclusive, for an authorization that is consistent with whatever engineering solution has been agreed to by them that avoids mutual exclusivity with the grantable application.

(c) In order to assist applicants in seeking engineering solutions that will avoid mutual exclusivity, the Commission shall, promptly after the closing date for filing applications for any frequency block in an Economic Area, notify all applicants for that frequency block of the names and addresses of all other applicants for the same frequency block, so the applicants can if they choose engage in the consultations, collaboration, discussions, and exchange of information contemplated by §26.202(b).

§ 26.202 Competitive bidding design for GWCS licensing.

(a) The Commission will employ the following competitive bidding designs when choosing from among mutually exclusive initial applications to provide GWCS service:

- (1) Simultaneous multiple round auctions
- (2) Sequential oral auctions

(b) The Commission may design and test alternative procedures. The Commission will announce by Public Notice before each auction the competitive bidding design to be employed in a particular auction.

(c) The Commission may use single combined auctions, which combine bidding for two or more substitutable licenses and award licenses to the highest bidders until the available licenses are exhausted. This technique may be used in conjunction with any type of auction.

§ 26.203 Competitive bidding mechanisms.

See Section 1.2104.

§ 26.204 Reserved

§ 26.205 Bidding application (FCC Form 175 and 175-S Short-Form).

See Section 1.2105.

§ 26.206 Submission of upfront payments and down payments.

See Section 1.2106.

§ 26.207 Long form applications.

See Section 1.2107.

§ 26.208 License grant, denial, default, and disqualification.

See Section 1.2109.

§ 26.209 Eligibility for partitioned licenses.

(a) Notwithstanding § 26.102, an applicant [~~that is a rural telephone company, as defined in § 26.4,~~] may be granted a GWCS license that is geographically partitioned from a separately licensed EA, so long as the EA applicant or licensee has voluntarily agreed (in writing) to partition a portion of the license [~~to the rural telephone company~~].

(b) If partitioned licenses are being applied for in conjunction with a license(s) to be awarded through competitive bidding procedures --

(1) The applicable procedures for filing short-form applications and for submitting upfront payments and down payments contained in this part and Part 1 of this chapter shall be followed by the applicant, who must disclose as part of its short-form application all parties to agreement(s) [~~with or among rural telephone companies~~] to partition the license pursuant to this section, if won at auction (*see* §1.2105(a)(2)(viii));

(2) Each [~~rural telephone company~~] applicant that is a party to an agreement to partition the license shall file a long-form application for its respective, mutually agreed-upon geographic area together with the application for the remainder of the EA filed by the auction winner.

(c) If the partitioned license is being applied for as a partial assignment of the EA license following grant of the initial license, request for authorization for partial assignment of a license shall be made pursuant to §26.324.

(d) Each application for a partitioned area (long-form initial application or partial assignment application) shall contain a partitioning plan that must propose to establish a partitioned area to be licensed that meets the following criteria:

(1) Conforms to established geopolitical boundaries (such as county lines), or other lines agreed to by the parties and defined in their application;

(2) Includes the wireline service area of [the] an applicant that is a rural telephone company [applicant]; and

(3) [Is] In that case, is reasonably related to the rural telephone company's wireline service area.

Note to paragraph (d)(3) of this section: A partitioned service area will be presumed to be reasonably related to the rural telephone company's wireline service area if the partitioned service area contains no more than twice the population overlap between the rural telephone company's wireline service area and the partitioned area.

(e) Each licensee in each partitioned area will be responsible for meeting the construction requirements in its area (see § 26.104).

§ 26.210 Provisions for small businesses.

(a) Bidding credits. A winning bidder that qualifies as a small business or a consortium of small businesses may use the bidding credit specified in Section 1.2110(e)(2)(iii).

(b) Demonstrating small business qualifications. See Section 1.2110(i).

(c) Audits. See Section 1.2110(l).

(d) Unjust Enrichment

See Section 1.2111.

Subpart F – Application, Licensing, and Processing Rules for GWCS

§ 26.301 Authorization required.

No person shall use or operate any device for the transmission of energy or communications by radio in the services authorized by this part except as provided in this part.

§ 26.302 Eligibility.

(a) *General.* Authorizations will be granted upon proper application if:

(1) The applicant is qualified under the applicable laws and the regulations, policies and decisions issued under those laws, including § 26.101 and 26.12;

(2) There are frequencies available to provide satisfactory service; and

(3) The public interest, convenience or necessity would be served by a grant.

(b) Alien ownership. A GWCS authorization to provide Commercial Mobile Radio Service may not be granted to or held by:

(1) Any alien or the representative of any alien.

(2) Any corporation organized under the laws of any foreign government.

(3) Any corporation of which more than one-fifth of the capital stock is owned of record or voted by aliens or their representatives or by a foreign government or representative thereof or any corporation organized under the laws of a foreign country.

(4) Any corporation directly or indirectly controlled by any other corporation of which more than one-fourth of the capital stock is owned of record or voted by aliens, their representatives, or by a

foreign government or representative thereof, or by any corporation organized under the laws of a foreign country, if the Commission finds that the public interest will be served by the refusal or revocation of such license.

(c) A GWCS authorization to provide Private Mobile Radio Service may not be granted to or held by a foreign government or a representative thereof.

§ 26.303 Formal and informal applications.

(a) Except for an authorization under any of the conditions stated in section 308(a) of the Communications Act of 1934 (47 U.S.C. 308(a)), the Commission may grant only upon written application received by it, the following authorization: station licenses; modifications of licenses; renewals of licenses; transfers and assignments of station licenses, or any right thereunder.

(b) Except as may be otherwise permitted by this part, a separate written application shall be filed for each instrument of authorization requested. Applications may be:

- (1) "Formal applications" where the Commission has prescribed in this Part a standard form; or
- (2) "Informal applications" (normally in letter form) where the Commission has not prescribed a standard form.

(c) An informal application will be accepted for filing only if:

- (1) A standard form is not prescribed or clearly applicable to the authorization requested;
- (2) It is a document submitted, in duplicate, with a caption which indicates clearly the nature of the request, radio service involved, location of the station, and the application file number (if known); and
- (3) It contains all the technical details and informational showings required by the rules and states clearly and completely the facts involved and authorization desired.

§ 26.304 Filing of GWCS applications, fees, and numbers of copies.

(a) As prescribed by §§ 26.305 and 26.307, standard formal application forms applicable to the GWCS may be obtained from either:

- (1) Federal Communications Commission, Washington, DC 20554; or
- (2) By calling the Commission's Forms Distribution Center, (202) 418-3676.

(b) Applications for the initial provision of GWCS service must be filed on FCC Form 175 in accordance with the rules in § 26.305 and Part 1, Subpart Q of this chapter. In the event of mutual exclusivity between applicants filing FCC Form 175, only auction winners will be eligible to file subsequent long form applications on FCC Form ~~{XXX}~~ 601 for initial GWCS licenses. ~~{Mutually}~~ Except as otherwise provided in §26.201, mutually exclusive applications filed on Form 175 are subject to competitive bidding under those rules. ~~{GWCS applicants filing Form XXX need not complete Schedule B-}~~

(c) All applications for GWCS radio station authorizations (other than applications for initial provision of GWCS service filed on FCC Form 175) shall be submitted for filing to: Federal Communications Commission, Washington, DC 20554, Attention: GWCS Processing Section. Applications requiring fees as set forth at Part 1, Subpart G of this chapter must be filed in accordance with § 0.401(b) of this chapter.

(d) All correspondence or amendments concerning a submitted application shall clearly identify the name of the applicant, applicant identification number or Commission file number (if known) or station call sign of the application involved, and may be sent directly to the Wireless Telecommunications Bureau, Washington, DC 20554, GWCS Processing Section.

(e) Except as otherwise specified, all applications, amendments, correspondence, pleadings and forms (including FCC Form 175) shall be submitted on one original paper copy and with three microfiche copies, including exhibits and attachments thereto, and shall be signed as prescribed by § 1.743 of this chapter. Unless otherwise provided by the FCC, filings of five pages or less are exempt from the requirement to submit on microfiche, as well as emergency filings like letters requesting special temporary authority. Those filing any amendments, correspondence, pleadings, and forms must simultaneously submit the original hard copy which must be stamped "original". In addition to the original hard copy, those filing pleadings, including pleadings under § 1.2108 of this chapter shall also submit 2 paper copies as provided in § 1.51 of this chapter.

(1) Microfiche copies. Each microfiche copy must be a copy of the signed original. Each microfiche copy shall be a 148mm 0A 105mm negative (clear transparent characters appearing on an opaque background) at 240A to 270A reduction for microfiche or microfiche jackets. One of the microfiche sets must be a silver halide camera master or a copy made on silver halide film such as Kodak Direct Duplicatory Film. The microfiche must be placed in paper microfiche envelopes and submitted in a B6 (125 mm 0A 176 mm) or 5 0A 7.5 inch envelope. All applicants must leave Row "A" (the first row for page images) of the first fiche blank for in-house identification purposes.

(2) All applications and all amendments must have the following information printed on the mailing envelope, the microfiche envelope, and on the title area at the top of the microfiche: (i) The name of the applicant;

(ii) The type of application (e.g. nationwide, or EA);

(iii) The month and year of the document;

(iv) Name of the document;

(v) File number, applicant identification number, and call sign, if assigned; and

(vi) The identification number and date of the Public Notice announcing the auction in response to which the application was filed (if applicable). Each microfiche copy of pleadings shall include:

(A) The month and year of the document;

(B) Name of the document;

(C) Name of the filing party;

(D) File number, applicant identification number, and call sign, if assigned;

(E) The identification number and date of the Public Notice announcing the auction in response to which the application was filed (if applicable). Abbreviations may be used if they are easily understood.

§ 26.305 Standard application forms and permissive changes or minor modifications for the General Wireless Communications Service.

(a) Applications for the initial provision of GWCS service must be filed on FCC Forms 175 and 175-S.

(b) Subsequent application by auction winners or non-mutually exclusive applicants for GWCS radio station(s) under Part 26. FCC Form [XXX] 601 ("Application for ~~New or Modified General Wire-~~

less Communications Service Under Part 26") Wireless Telecommunications Bureau Radio Service Authorization") shall be submitted by each auction winner for each GWCS license applied for on FCC Form 175. In the event that mutual exclusivity does not exist between applicants filing FCC Form 175, the Commission will so inform the applicant and the applicant will also file FCC Form ~~XXX~~ 601. Blanket licenses are granted for each market frequency block. Applications for individual sites are not needed and will not be accepted. See § 26.11. ~~[GWCS applicants filing Form XXX need not complete Schedule B.]~~

(c) Extensions of time and reinstatement. When a licensee cannot complete construction in accordance with the provisions of § 26.104, a timely application for extension of time (FCC Form 489) must be filed.

§ 26.306 Miscellaneous forms.

(a) Licensee qualifications. FCC Form 430 ("Common Carrier and Satellite Radio Licensee Qualifications Report") shall be filed by General Wireless Communications Service licensees only as required by Form 490 (Application for Assignment or Transfer of Control Under part 22).

(b) Renewal of station license. Except for renewal of special temporary authorizations, FCC Form 405 ("Application for Renewal of Station License") must be filed in duplicate by the licensee between thirty (30) and sixty (60) days prior to the expiration date of the license sought to be renewed.

§ 26.307 General application requirements.

(a) See Section 1.2112.

§ 26.308 Technical content of applications; maintenance of list of station locations.

All applications required by this part shall contain all technical information required by the application forms or associated Public Notice(s). Applications other than initial applications for a GWCS license must also comply with all technical requirements of the rules governing the GWCS (see Subparts C and D as appropriate).

§ 26.310 Waiver of rules.

(a) *Request for waivers.* (1) Waivers of these rules may be granted upon application or by the Commission on its own motion. Requests for waivers shall contain a statement of reasons sufficient to justify a waiver. Waivers will not be granted except upon an affirmative showing:

(i) That the underlying purpose of the rule will not be served, or would be frustrated, by its application in a particular case, and that grant of the waiver is otherwise in the public interest; or

(ii) That the unique facts and circumstances of a particular case render application of the rule inequitable, unduly burdensome or otherwise contrary to the public interest. Applicants must also show the lack of a reasonable alternative.

(2) If the information necessary to support a waiver request is already on file, the applicant may cross-reference to the specific filing where it may be found.

(b) *Denial of waiver, alternate showing required.* If a waiver is not granted, the application will be dismissed as defective unless the applicant has also provided an alternative proposal which complies with the Commission's rules (including any required showings).

§ 26.311 Defective applications.

(a) Unless the Commission shall otherwise permit, an application will be unacceptable for filing and will be returned to the applicant with a brief statement as to the omissions or discrepancies if:

(1) The application is defective with respect to completeness of answers to questions, informational showings, execution, or other matters of a formal character; or

(2) The application does not comply with the Commission's rules, regulations, specific requirements for additional information or other requirements. See also § 1.2105 of this chapter.

(b) Some examples of common deficiencies which result in defective applications under paragraph (a) of this section are:

(1) The application is not filled out completely and signed;

(2) The application (other an application filed on FCC Form 175) does not include an environmental assessment as required for an action that may have a significant impact upon the environment, as defined in § 1.1307 of this chapter.

(3) The application is filed prior to the Public Notice issued under § 26.317 announcing the application filing date for the relevant auction or after the cutoff date prescribed in that Public Notice;

(c) If an applicant is requested by the Commission to file any documents or any supplementary or explanatory information not specifically required in the prescribed application form, a failure to comply with such request within a specified time period will be deemed to render the application defective and will subject it to dismissal.

§ 26.312 Inconsistent or conflicting applications.

While an application is pending and undecided, no subsequent inconsistent or conflicting application may be filed by the same applicant, his successor or assignee, or on behalf or for the benefit of the same applicant, his successor or assignee.

§ 26.313 Reserved

§ 26.314 Amendment of applications for General Wireless Communications Service (other than applications filed on FCC Form 175).

This section applies to all applications for General Wireless Communications Service other than applications filed on FCC Form 175.

(a) *Amendments as of right.* A pending application may be amended as a matter of right if the application has not been designated for hearing.

(1) Amendments shall comply with § 26.319, as applicable; and

(2) Amendments which resolve interference conflicts or amendments under § 26.319 may be filed at any time.

(b) The Commission or the presiding officer may grant requests to amend an application designated for hearing only if a written petition demonstrating good cause is submitted and properly served upon the parties of record.

(c) *Major amendments, minor amendments.* The Commission will classify all amendments as minor except in the cases listed below. An amendment shall be deemed to be a major amendment subject to § 26.317 under any of the following circumstances:

(1) Change in technical proposal. If the amendment results in a substantial change in the engineering proposal such as (but not necessarily limited to) a change in, or an addition of, a radio frequency; or

(2) Amendment to proposed service area. If the amendment extends the reliable service area of the proposed facilities outside its EA or other applicable market area as defined in § 26.102; or

(3) A substantial change in ownership or control.

(d) If a petition to deny (or other formal objection) has been filed, any amendment, requests for waiver, (or other written communications) shall be served on the petitioner, unless waiver of this requirement is granted pursuant to paragraph (e) of this section. See also § 1.2108 of this chapter.

(e) The Commission may waive the service requirements of paragraph (d) of this section and prescribe such alternative procedures as may be appropriate under the circumstances to protect petitioners' interests and to avoid undue delay in a proceeding, if an applicant submits a request for waiver which demonstrates that the service requirement is unreasonably burdensome.

(f) Any amendment to an application shall be signed and shall be submitted in the same manner, and with the same number of copies, as was the original application. Amendments may be made in letter form if they comply in all other respects with the requirements of this chapter.

(g) An application will be considered to be a newly filed application if it is amended by a major amendment (as defined in this section), except in the following circumstances:

(1) The amendment reflects only a change in ownership or control found by the Commission to be in the public interest;

(2) The amendment corrects typographical transcription, or similar clerical errors which are clearly demonstrated to be mistakes by reference to other parts of the application, and whose discovery does not create new or increased frequency conflicts;

(3) The amendment does not create new or increased frequency conflicts, and is demonstrably necessitated by events which the applicant could not have reasonably foreseen at the time of filing, such as, for example:

(i) The loss of a transmitter or receiver site by condemnation, natural causes, or loss of lease or option; or

(ii) Obstruction of a proposed transmission path caused by the erection of a new building or other structure.

§ 26.315 Application for temporary authorizations.

(a) In circumstances requiring immediate or temporary use of facilities, request may be made for special temporary authority to install and/or operate new or modified equipment. Any such request may be submitted as an informal application in the manner set forth in § 26.303 and must contain full particulars as to the proposed operation including all facts sufficient to justify the temporary authority sought and the public interest therein. No such request will be considered unless the request is received by the Commission at least 10 days prior to the date of proposed construction or operation

or, where an extension is sought, expiration date of the existing temporary authorization. A request received within less than 10 days may be accepted upon due showing of sufficient reasons for the delay in submitting such request.

(b) Special temporary authorizations may be granted without regard to the 30-day public notice requirements of § 26.317 when:

(1) The authorization is for a period not to exceed 30 days and no application for regular operation is contemplated to be filed;

(2) The authorization is for a period not to exceed 60 days pending the filing of an application for such regular operation;

(3) The authorization is to permit interim operation to facilitate completion of authorized construction or to provide substantially the same service as previously authorized; or

(4) The authorization is made upon a finding that there are extraordinary circumstances requiring operation in the public interest and that delay in the institution of such service would seriously prejudice the public interest.

(c) Temporary authorizations of operation not to exceed 180 days may be granted under the standards of section 309(f) of the Communications Act where extraordinary circumstances so require. Extensions of the temporary authorization for a period of 180 days each may also be granted, but the renewal applicant bears a heavy burden to show that extraordinary circumstances warrant such an extension.

(d) In cases of emergency found by the Commission, involving danger to life or property or due to damage of equipment, or during a national emergency proclaimed by the president or declared by the Congress or during the continuance of any war in which the United States is engaged and when such action is necessary for the national defense or safety or otherwise in furtherance of the war effort, or in cases of emergency where the Commission finds that it would not be feasible to secure renewal applications from existing licensees or otherwise to follow normal licensing procedure, the Commission will grant radio station authorizations and station licenses, or modifications or renewals thereof, during the emergency found by the Commission or during the continuance of any such national emergency or war, as special temporary licenses, only for the period of emergency or war requiring such action, without the filing of formal applications.

§ 26.316 Receipt of application; applications in the General Wireless Communications Service filed on FCC Form 175 and other applications in the GWCS Service.

(a) All applications for the initial provision of GWCS service must be submitted on FCC Forms 175 and 175-S. Mutually exclusive initial applications in the General Wireless Communications Services are subject to competitive bidding. FCC Form ~~[XXX]~~ 601 ("Application for ~~[New or Modified General Wireless Communications Service Radio Station Under Part 26"]~~ ~~Wireless Telecommunications Bureau Radio Service Authorization~~") must be submitted by each winning bidder for each GWCS license applied for on FCC Form 175. In the event that mutual exclusivity does not exist between applicants filing FCC Form 175, the applicant will also file FCC Form ~~{401. The}~~ 601. ~~Except as otherwise provided in §26.201, the aforementioned Forms 175, 175-S, and [XXX] 601 are~~ subject to the provisions of Part 1, Subpart Q ("Competitive Bidding Proceedings") and subpart E of this part. Blanket licenses are granted for each market frequency block. Applications for individual sites are not needed and will not be accepted. See § 26.11.

(b) Applications received for filing are given a file number. The assignment of a file number to an application is merely for administrative convenience and does not indicate the acceptance of the application for filing and processing. Such assignment of a file number will not preclude the subsequent return or dismissal of the application if it is found to be not in accordance with the Commission's rules.

(c) Acceptance of an application for filing merely means that it has been the subject of a preliminary review as to completeness. Such acceptance will not preclude the subsequent return or dismissal of the application if it is found to be defective or not in accordance with the Commission's rules.

§ 26.317 Public notice period.

(a) At regular intervals, the Commission will issue a public notice listing:

- (1) The acceptance for filing of all applications and major amendments thereto;
- (2) Significant Commission actions concerning applications listed as acceptable for filing;
- (3) Information which the Commission in its discretion believes of public significance. Such notices are solely for the purpose of informing the public and do not create any rights in an applicant or any other person.

(4) Special environmental considerations as required by part 1 of this chapter.

(b) The Commission will not grant an application filed on Form 601 filed either by a winning bidder or by an applicant whose Form 175 application is not mutually exclusive with other applicants, until the expiration of a period of not less than seven (7) days following the issuance of a public notice listing the application, or any major amendments thereto, as acceptable for filing. See also § 1.2108 of this chapter.

(c) As an exception to paragraphs (a)(1), (a)(2) and (b) of this section, the public notice provisions are not applicable to applications:

(1) For authorization of a minor technical change in the facilities of an authorized station where such a change would not be classified as a major amendment (as defined by § 26.314) were such a change to be submitted as an amendment to a pending application;

(2) For issuance of a license subsequent to a radio station authorization or, pending application for a grant of such license, any special or temporary authorization to permit interim operation to facilitate completion of authorized construction or to provide substantially the same service as would be authorized by such license;

(3) For extension of time to complete construction of authorized facilities, see § 26.104;

(4) For temporary authorization pursuant to § 26.315;

(5) For an authorization under any of the proviso clauses of section 308(a) of the Communications Act of 1934 (47 U.S.C. 308(a));

(6) For consent to an involuntary assignment or transfer of control of a radio authorization; or

(7) For consent to a voluntary assignment or transfer of control of a radio authorization, where the assignment or transfer does not involve a substantial change in ownership or control.

§ 26.318 Dismissal and return of applications.

(a) Any application may be dismissed without prejudice as a matter of right if the applicant requests its dismissal prior to designation for hearing or, in the case of applications filed on Forms 175 and

175-S, prior to auction. An applicant's request for the return of his application after it has been accepted for filing will be considered to be a request for dismissal without prejudice. Applicants requesting dismissal of their applications are also subject to § 1.2104 of this chapter.

(b) A request to dismiss an application without prejudice will be considered after designation for hearing only if:

(1) A written petition is submitted to the Commission and is properly served upon all parties of record, and

(2) The petition complies with the provisions of this Section and demonstrates good cause.

(c) The Commission will dismiss an application for failure to prosecute or for failure to respond substantially within a specified time period to official correspondence or requests for additional information. Dismissal shall be without prejudice if made prior to designation for hearing or prior to auction, but dismissal may be made with prejudice for unsatisfactory compliance or after designation for hearing or after the applicant is notified that it is the winning bidder under the auction process.

§ 26.319 Ownership changes and agreements to amend or to dismiss applications or pleadings.

(a) Applicability. Subject to the provisions of § 1.2105 of this chapter (Bidding Application and Certification Procedures; Prohibition of Collusion), and to the provisions of § 26.201(b), this section applies to applicants and all other parties interested in pending applications who wish to resolve contested matters among themselves with a formal or an informal agreement or understanding. This section applies only when the agreement or understanding will result in:

(1) A major change in the ownership of an applicant to which § 26.323 and 26.324 would apply, or

(2) The individual or mutual withdrawal, amendment or dismissal of any pending application, amendment, petitioner or other pleading.

(b) Parties that have filed an application in the GWCS that is mutually exclusive with one or more other applications, and then enter into an agreement to resolve the mutual exclusivity by withdrawing or requesting dismissal of the application or an amendment thereto, must obtain the approval of the FCC. Parties that have filed a petition to deny, informal objection or other pleading against a pending application, and then seek to withdraw or request dismissal of the petition, either unilaterally or in exchange for a financial consideration, must obtain the approval of the FCC.

(1) The party withdrawing or requesting dismissal of its application, petition to deny, informal objection or other pleading must submit to the FCC a request for approval of the withdrawal or dismissal, a copy of any written agreement related to the withdrawal or dismissal, and an affidavit setting forth:

(i) A certification that neither the party nor its principals has received or will receive any money or other consideration in excess of the legitimate and prudent expenses incurred in prosecuting the application, petition to deny, informal objection or other pleading in exchange for the withdrawal or dismissal of the application, petition to deny, informal objection or other pleading, except that this provision does not apply to dismissal or withdrawal of applications pursuant to bona fide merger agreements;

(ii) The exact nature and amount of any consideration received or promised;

(iii) An itemized accounting of the expenses for which it seeks reimbursement; and

(iv) The terms of any oral agreement related to the withdrawal or dismissal of the application, petition to deny, informal objection or other pleading.

(2) In addition, within 5 days of the filing date of the applicant's or petitioner's request for approval, each remaining party to any written or oral agreement must submit an affidavit setting forth:

(i) A certification that neither the applicant nor its principals has paid or will pay money or other consideration in excess of the legitimate and prudent expenses of the petitioner in exchange for withdrawing or dismissing the application, petition to deny, informal objection or other pleading; and

(ii) The terms of any oral agreement relating to the withdrawal or dismissal of the application, petition to deny, informal objection or other pleading.

(3) For the purposes of this section:

(i) Affidavits filed pursuant to this section must be executed by the filing party, if an individual, a partner having personal knowledge of the facts, if a partnership, or an officer having personal knowledge of the facts, if a corporation or association.

(ii) Applications, petitions to deny, informal objections and other pleadings are deemed to be pending before the FCC from the time the application or petition to deny is filed with the FCC until such time as an order of the FCC granting, denying or dismissing the application, petition to deny, informal objection or other pleading is no longer subject to reconsideration by the FCC or to review by any court.

(iii) "Legitimate and prudent expenses" are those expenses reasonably incurred by a party in preparing to file, filing, prosecuting and/or settling its application, petition to deny, informal objection or other pleading for which reimbursement is sought.

(iv) "Other consideration" consists of financial concessions, including, but not limited to, the transfer of assets or the provision of tangible pecuniary benefit, as well as non-financial concessions that confer any type of benefit on the recipient.

(v) Reimbursement by an applicant of the legitimate and prudent expenses of a potential petitioner or objector, incurred reasonably and directly in preparing to file a petition to deny, will not be considered to be payment for refraining from filing a petition to deny or an informal objection. Payments made directly to a potential petitioner or objector, or a person related to a potential petitioner or objector, to implement non-financial promises are prohibited unless specifically approved by the FCC.

§ 26.320 Opposition to applications.

See Section 1.2108.

§ 26.321 Mutually exclusive applications.

(a) The Commission will consider applications to be mutually exclusive if their conflicts are such that the grant of one application would effectively preclude by reason of harmful electrical interference, or other practical reason, the grant of one or more of the other applications. The Commission will presume "harmful electrical interference" to mean interference which would result in a material impairment to service rendered to the public despite full cooperation in good faith by all applicants or parties to achieve reasonable technical adjustments which would avoid electrical conflict.

(b) Mutually exclusive applications filed on Form 175 for the initial provision of GWCS service are, except as otherwise provided in §26.201(b), subject to competitive bidding in accordance with the procedures in Subpart F of this part and in Part 1, Subpart Q of this chapter.

(c) An application will be entitled to comparative consideration with one or more conflicting applications only if the Commission determines that such comparative consideration will serve the public interest.

§ 26.322 Consideration of applications.

(a) Applications for an instrument of authorization will be granted if, upon examination of the application and upon consideration of such other matters as it may officially notice, the Commission finds that the grant will serve the public interest, convenience, and necessity. See also § 1.2108 of this chapter.

(b) The grant shall be without a formal hearing if, upon consideration of the application, any pleadings or objections filed, or other matters which may be officially noticed, the Commission finds that:

(1) The application is acceptable for filing, and is in accordance with the Commission's rules, regulations, and other requirements;

(2) The application is not subject to a post-auction hearing or to comparative consideration pursuant to § 26.321 with another application(s);

(3) A grant of the application would not cause harmful electrical interference to an authorized station;

(4) There are no substantial and material questions of fact presented; and

(5) The applicant is qualified under current FCC regulations and policies.

(c) If the Commission should grant without a formal hearing an application for an instrument of authorization which is subject to a petition to deny filed in accordance with § 26.320, the Commission will deny the petition by the issuance of a Memorandum Opinion and Order which will concisely report the reasons for the denial and dispose of all substantial issues raised by the petition.

(d) Whenever the Commission, without a formal hearing, grants any application in part, or subject to any terms or conditions other than those normally applied to applications of the same type, it shall inform the applicant of the reasons therefor, and the grant shall be considered final unless the Commission should revise its action (either by granting the application as originally requested, or by designating the application for a formal evidentiary hearing) in response to a petition for reconsideration which:

(1) Is filed by the applicant within thirty (30) days from the date of the letter or order giving the reasons for the partial or conditioned grant;

(2) Rejects the grant as made and explains the reasons why the application should be granted as originally requested; and,

(3) Returns the instrument of authorization.

(e) The Commission will designate an application for a formal hearing, specifying with particularity the matters and things in issue, if, upon consideration of the application, any pleadings or objections filed, or other matters which may be officially noticed, the Commission determines that:

(1) A substantial and material question of fact is presented (see also § 1.2108 of this chapter);

(2) The Commission is unable for any reason to make the findings specified in paragraph (a) of this section and the application is acceptable for filing, complete, and in accordance with the Commission's rules, regulations, and other requirements; or

(3) The application is entitled to comparative consideration (under § 26.321) with another application (or applications).

(f) The Commission may grant, deny or take other action with respect to an application designated for a formal hearing pursuant to paragraph (e) of this section or Part 1 of this chapter.

(g) Reconsideration or review of any final action taken by the Commission will be in accordance with Part 1, Subpart A of this chapter.

§ 26.323 Post-auction divestitures.

Any parties sharing a common non-controlling ownership interest who aggregate more GWCS spectrum among them than a single entity is entitled to hold will be permitted to divest sufficient properties within 90 days of the license grant to come into compliance with the spectrum aggregation limits as follows:

(a) The GWCS applicant shall submit a signed statement with its long-form application stating that sufficient properties will be divested within 90 days of the license grant. If the licensee is otherwise qualified, the Commission will grant the applications subject to a condition that the licensee come into compliance with the GWCS spectrum aggregation limits within 90 days of grant.

(b) Within 90 days of license grant, the licensee must certify that the applicant and all parties to the application have come into compliance with the GWCS spectrum aggregation limits. If the licensee fails to submit the certification within 90 days, the Commission will immediately cancel all broadband GWCS licenses won by the applicant, impose the default payment and, based on the facts presented, take any other action it may deem appropriate. Divestiture may be to an interim trustee if a buyer has not been secured in the required time frame, as long as the applicant has no interest in or control of the trustee, and the trustee may dispose of the property as it sees fit. In no event may the trustee retain the property for longer than six months from grant of license.

§ 26.324 Transfer of control or assignment of station authorization.

(a) Authorizations shall be transferred or assigned to another party, voluntarily (for example, by contract) or involuntarily (for example, by death, bankruptcy, or legal disability), directly or indirectly or by transfer of control of any corporation holding such authorization, only upon application and approval by the Commission. A transfer of control or assignment of station authorization in the General Wireless Communications Service is also subject to § 1.2111 of this chapter (Assignment or transfer of control: unjust enrichment)

(1) A change from less than 50% ownership to 50% or more ownership shall always be considered a transfer of control.

(2) In other situations a controlling interest shall be determined on a case-by-case basis considering the distribution of ownership, and the relationships of the owners, including family relationships.

(b) Form required:

(1) *Assignment.*

(i) FCC Form 490 shall be filed to assign a license or permit.

(ii) In the case of involuntary assignment, FCC Form 490 shall be filed within 30 days of the event causing the assignment.

(2) Transfer of control.

(i) FCC Form 490 shall be submitted in order to transfer control of a corporation holding a license or permit.

(ii) In the case of involuntary transfer of control, FCC Form 490 shall be filed within 30 days of the event causing the transfer.

(3) *Form 430.* Whenever an application must be filed under paragraphs (a) (1) or (a)(2) of this section, the assignee or transferee shall file FCC Form 430 ("Common Carrier Radio License Qualification Report") unless an accurate report is on file with the Commission.

(4) *Notification of completion.* The Commission shall be notified by letter of the date of completion of the assignment or transfer of control.

(5) If the transfer of control of a license is approved, the new licensee is held to the original build-out requirement of § 26.104.

(c) In acting upon applications for transfer of control or assignment, the Commission will not consider whether the public interest, convenience, and necessity might be served by the transfer or assignment of the authorization to a person other than the proposed transferee or assignee.

(d) Applicants seeking to transfer their licenses within three years after the initial license grant date are required to file, together with their transfer application, the associated contracts for sale, option agreements, management agreements, and all other documents disclosing the total consideration to be received in return for the transfer of the license.

§ 26.325 Extension of time to complete construction.

(a) If construction is not completed within the time period set forth in § 26.104, the authorization will automatically expire. Before the period for construction expires an application for an extension of time to complete construction (FCC Form 489) may be filed. See subsection (b) of this section. Within 30 days after the authorization expires an application for reinstatement may be filed on FCC Form 489.

(b) An application for extension of time to complete construction may be made on FCC Form 489. Extension of time requests must be filed prior to the expiration of the construction period. Extensions will be granted only if the licensee shows that the failure to complete construction is due to causes beyond his control. An application for modification of an authorization (under construction) does not extend the initial construction period. If additional time to construct is required, an FCC Form 489 must be submitted.

§ 26.326 Termination of authorization.

(a)(1) All authorizations shall terminate on the date specified on the authorization or on the date specified by these rules, unless a timely application for renewal has been filed.

(2) If no application for renewal has been made before the authorization's expiration date, a late application for renewal will only be considered if it is filed within 30 days of the expiration date and shows that the failure to file a timely application was due to causes beyond the applicant's control. During this 30 day period reinstatement applications must be filed on FCC Form 489. Service to

subscribers need not be suspended while a late filed renewal application is pending, but such service shall be without prejudice to Commission action on the renewal application and any related sanctions. See also § 26.14 (Criteria for Comparative Renewal Proceedings).

(b) Special Temporary Authority. A special temporary authorization shall automatically terminate upon failure to comply with the conditions in the authorization.

Petition for Rule Making
Of Global Frontiers, Inc.

EXHIBIT NO. 4

Portion of Table of Frequency Allocations in
Part 2 of Title 47 CFR, Showing
Revisions Proposed by Petitioner

International table			United States table		FCC use designators	
Region 1—allocation MHz	Region 2—allocation MHz	Region 3—allocation MHz	Government	Non-Government	Rule part(s)	Special-use frequencies
(1)	(2)	(3)	Allocation MHz	Allocation MHz		
4200–4400	AERONAUTICAL RADIO- NAVIGATION 789 788 790 791		4200–4400 AERONAUTICAL RADIO- NAVIGATION 791 US261	4200–4400 AERONAUTICAL RADIO- NAVIGATION 791 US261	AVIATION (87)	
4400–4500	FIXED MOBILE		4400–4500 FIXED MOBILE	4400–4500		
4500–4800 FIXED FIXED-SATELLITE (space- to-Earth) MOBILE	4500–4800 FIXED FIXED-SATELLITE (space-to-Earth) MOBILE	4500–4800 FIXED FIXED-SATELLITE (space-to-Earth) MOBILE	4500–4660 FIXED MOBILE US245	4500–4660 FIXED-SATELLITE (space-to-Earth) 792A US245		
			4660–4685 FIXED FIXED-SATELLITE (space-to-Earth) MOBILE G122	4660–4685 792A US245		
			4685–4800 FIXED MOBILE US245	4685–4800 FIXED-SATELLITE (space-to-Earth) 792A US245		
792A	792A	792A				
4800–4990	FIXED MOBILE 793 Radio Astronomy 720 778 794		4800–4940 FIXED MOBILE 720 778 US203	4800–4940 FIXED MOBILE 720 778 US203		
			4940–4990 720 778 US257	4940–4990 FIXED MOBILE 720 778 US257	GWCS (26)	